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Attorneys for Defendant
JOHN GIMBEL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

—000—

UNITED STATES OF AMERICA,

CR. No. 09-0989-MHP

Plaintiff,

**MOTION FOR RECONSIDERATION
OF MOTION TO DISMISS
INDICTMENT**

vs.

JOHN GIMBEL,

Defendant.

PLAIN ERROR IS NOTICED

Defendant's counsel, on behalf of Mr. John Gimbel, hereby files and submits, the following:

Gimbel has waited 10 agonizing months rotting in prison for an attorney to put a simple subject speech to a judge's face and show that it should be dismissed.

It is indisputable Gimbel was arrested for a Sept. 28, 2009 e-mail; same e-mail is, thus, the subject speech and subject.

The indictment contained an excerpt from this e-mail, pointing to, very generally, some of the language within the e-mail which gave rise to allegations of prohibited expression.

Many years ago, an advising attorney of 20 years in practice grilled Gimbel on the fatality, when requesting writs or doing motions in speech cases, of hiding any part of the

1 subject speech. Put simply, he showed: If you're requesting mandate or dismissal on a subject
2 speech, and the judge knows he's not being shown the whole speech, he absolutely will never
3 – cannot – accord dismissal, in case there's something in this part he can't see that
4 corroborates, affirms or triggers the part he can. Defendant fully agrees, and has since day
5 one, with this instruction. Defendant, Gimbel, fully agrees in the recent motion hearing of
6 Aug. 6, 2010 that Miss Patel (judge) could not safely, or in conscience accord dismissal with
7 most of the subject speech weirdly not there. The motion was, therefore – agreed – doomed
8 to fail.

9 Such doomed to fail, because of this plain error of omitting, clearly more than affects
10 substantial rights under FRCP52(b); it damned the motion outright and upfront to fail.

11 Mike Stepanian, attorney appointed to Gimbel, was advised by Gimbel in about late
12 May or early June, 2010 at the time Gimbel was given the 1st unfiled draft of the front brief of
13 our motion. He was advised in writing, which can be shown, as to the consequences and
14 likely fatality of not attaching the entire Sept. 28 e-mail as exhibit. In all talks and writing I
15 showed perplexation he hadn't, and, thinking him wise, told him I was sure he was
16 anticipating the prosecutor would attach it to his brief; or, at the very latest, Mike would
17 attach it as exhibit to his trailing brief.

18 As you see, he left such exhibit out, saying to me, "We're focusing only on the
19 indictment."

20 I'm sorry, but the choice he made there is fatally flawed, failed and doomed,
21 regardless of what "rule" or legal practice he invokes to such focus.

22 Several other items in this event point to possible significant erratic defending in this
23 case; rather, in this one mistake:

24 He told me long ago, when I first brought to his attention the acquitting
25 opinion in the 2004 case, that he would never attach it to our motion. I
26 concurred before he spoke: I don't want piddly superior court opinions
27 in my present case, however clever: I only want affirmative-defense,
28 U.S. Supreme Court opinions, speech vindicating in majority, in
parallel only, I told him.

1 Suddenly, however, he attaches this nearly ancient web posting opinion to “the
2 console”—view the judge will have in our dismissal request, case, attaching it as Exh. A to the
3 trailing brief.

4 Bluntly, he got the kitchen sink in there to the view, but forgot the sole e-mail this
5 case is about – only about!

6 Hist statement to me as to why he attached it: “This will help them get to know you.”
7 Yet, he has specifically stated (pg 9, lns. 15-18, Trailing brief) any talk of these prior cases is
8 irrelevant to this motion.

9 It is indisputable that both our defendant’s dismissal briefs’ meat and
10 potatoes is that the e-mail is telling only the president to be doing any
11 of the killing of himself, etc.

12 It is indisputable that in oral on the motion on Aug. 6, both parties precisely only
13 rapped off another 75? page of transcripts repeating the briefs – not one new item in oral.

14 It is not in dispute that M. Stepanian at oral spoke not one word of our meat and
15 potatoes.... Omitted all that.

16 There are several other indicators not covered here....

17 Thus, this motion was improperly submitted as guaranteed to fail. The subject speech e-mail
18 should have been attached – earliest best, with plenty time for the judge to glance over her
19 console view, and the head-on, direct presentation of the case’s subject e-mail with the briefs.
20 Nothing on God’s green earth disallowed M. Stepanian from attaching the very subject e-
21 mail of the case, where you can get away with attaching irrelevancies he admits to.

22 To lay to rest this Plain Error, defendant asks approximately as follows:

23 That the judge stand ready to vacate the denial as necessary; that she commit some
24 significant time to recall or re-read our briefs with the Sept. 28, 2009 e-mail, JG000012-
25 JG000018,* close at hand for glances and view; AND, that she carefully read the 2 pages
26 enclosed here, numbered 1, 2.

27 *Attached here as Exhibit A.

28 This court should also notice there exist no convictions, state or federal, for someone

1 uttering the likes of “Oh, then go kill yourself about it, why don’t you!” Though unwanted
 2 and disgusting, even causing significant unrest (*Terminiello v. Chicago* U.S. 5.Ct. 1949), it is
 3 not “true threat.” The exact syntax places only the so called victim in all charge of any body
 4 injury tube. As with Obama, this won’t happen and is not a “true threat.”

5 Now go to your boss, ask a raise; when “No,” tell him to go kill himself about it. Sure,
 6 you might lose a job, but all charges of a viable threat BY YOU are doomed to fail.

7 Anyway, you know bosses; you don’t “give head” one day on his fancy, you’re out the
 8 job the same. He might evade the reasons on inquiry; people have “tastes,” also in personnel.
 9 Anyway, with your skill set you’ll have a much better paying job in no time! ☺

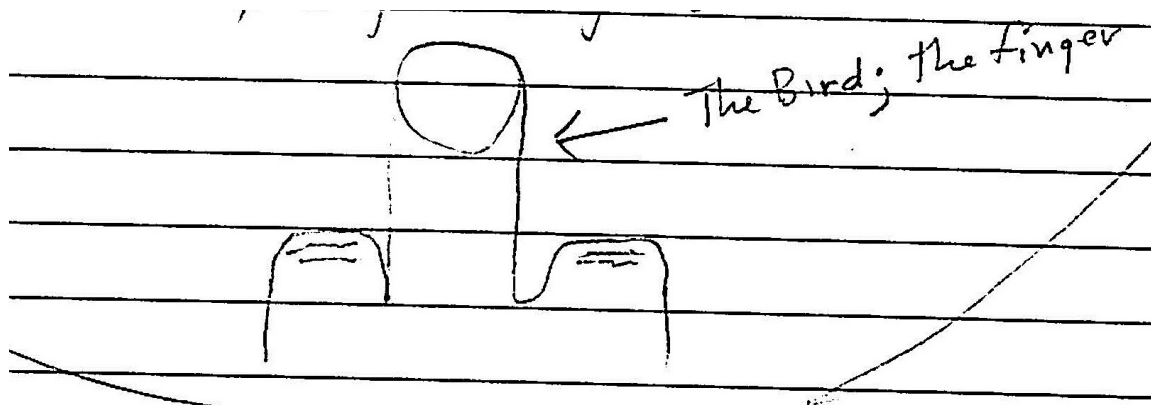
10 Dear Kevin Barry, Court,

11 The whole Sept. 28,2009 e-mail says precisely nothing more than this: (circled):

12 “Hey, buddy “chumsy” Obama, you might want to help pay out to Gimbel’s
 13 civil suits...

14 ... Then go kill yourself (your family first) if you don’t want to, why don’t
 15 you!”

16
 17 [The following image is solely illustrative and meant in no way to offend the Court]



25 The meat and potatoes of both our dismissal papers was that directing the president to
 26 any killing is simply allowable speech. This directing was found preemptively in the
 27 indictment language alone.

28 I am certain you understand that the foregoing utterance and graphic is allowable

1 speech. Not a “true threat.”

2 Definitively, what clinches the Sept. 28 e-mail as precisely nothing more than the
3 above speech and graphic is the paragraph several paragraphs past the indictment language,
4 speaking unequivocally to the president and the united states of asshole, saying “You should
5 willfully decapitate and drag your families and children...” It’s definitive, and I thank F.
6 Moore for introducing.

7 No reasonable person or jury would ever conclude that telling the president to do that
8 – and nothing else throughout the e-mail – ever comprised an actual threat UPON the
9 president BY the speaker. The speaker’s only “crime” is mischievously, smilingly-smiley,
10 trying to “beguile” the president into it! C’mon, really now.

11 The subject line? C’mon, just a smart ass “predicting” Sparkman’s “serial killer’s,
12 stalker’s next move”: This shadowy stalker “will march on Pennsylvania Ave with his felt
13 tip, making Obama next!” It’s not credible as a “true threat” for 2 reasons: 1. No shadowy
14 stalker self reports all his name, address, and phone; 2. By the very facts, there never was an
15 alarm over a murder, because there was no murder! – it was ruled to have been a suicide from
16 the beginning. What “alarm”, or “threat” is there over “a killer” when there is only a suicide
17 involved? C’mon, really now.

18 In addition, the language of the email in the indictment is not written grammatically as
19 a true threat. Defendant did not write “I will kill” or “I will decapitate.” Rather Defendant
20 wrote to the President, but in the third person, “[d]ecapitate and [expletive] drag that
21 [expletive] . . .” Thus, the language in no way conveys the message that Defendant is going
22 to enact some harm upon the President or his family. Nor does Defendant command some
23 third party to do so, because his email is addressed to the President himself. Because
24 Defendant is speaking in the third person about the President and yet addressing his email to
25 the President directly, the language of the email in the indictment cannot be construed to
26 convey a true threat, but rather a political expression of a frustrated constituent.

27 In conclusion, in cases raising First Amendment issues, courts have repeatedly held
28 that an appellate court has an obligation to “make an independent examination of the whole

1 record” to make sure that the “judgment does not constitute a forbidden intrusion on the field
2 of free expression.” *New York Times Co. V. Sullivan*, 376 U.S. 254, 284-286 (1964); *see also*
3 generally *Watts v. United States*, 394 U.S. 705 (1969).

4
5 We ask you to do the right thing, and request to disband the prosecution.

6
7 Thanks,

8 John Gimbel.

9
10 Respectfully Submitted.

11 Date: October 4, 2010

12 /s/ Michael Stepanian
13 Counsel for Defendant
14 John Gimbel
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EXHIBIT A

FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his che... Page 1 of 7

RUSSELL MILLER (SFO)

From: [REDACTED]
Sent: Monday, September 28, 2009 1:41 PM
To: RUSSELL MILLER (SFO); [REDACTED]
Cc: [REDACTED]
Subject: FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his chest with a felt tip:

[REDACTED]

From: [REDACTED]
Sent: Mon 9/28/2009 1:12 PM
To: [REDACTED]
Subject: FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his chest with a felt tip:

-----Original Message-----

From: RICHARD NORD (LOU)
Sent: Monday, September 28, 2009 1:04 PM
To: [REDACTED]
Subject: FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his chest with a felt tip:

Rick Nord
Special Agent
U.S. Secret Service
Louisville Field Office
502-582-5171

WARNING: This message is intended for the use of the individual or entity to which it is addressed and may contain information that is privileged, law enforcement sensitive, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by reply or by telephone 502-582-5171 and

10/20/2009

JG000012

FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his che... Page 2 of 7

immediately delete this message and all its attachments.

-----Original Message-----

From: Runyon, Keith [mailto:krunyon@louisvil.gannett.com]
Sent: Monday, September 28, 2009 12:52 PM
To: RICHARD NORD (LOU)
Subject: FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his chest with a felt tip:

Keith L. Runyon
Editor of The Forum and Book Editor
The Courier-Journal
525 W. Broadway
Louisville, Kentucky 40202
(502) 582-4594
Fax: (502) 582-4155
krunyon@courier-journal.com

-----Original Message-----

From: Duvall, Margie
Sent: Monday, September 28, 2009 12:48 PM
To: Runyon, Keith
Subject: FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his chest with a felt tip:

Margie Duvall | Executive Assistant/Office of the Publisher
The Courier-Journal | courier-journal.com
525 West Broadway | Louisville, KY 40202

P 502.582.4612
F 502.582.4066
mduvall@courier-journal.com

-----Original Message-----

From: J. [mailto:john.gimbel@charter.net]
Sent: Monday, September 28, 2009 12:08 PM
To: 'president@whitehouse.gov'; 'vice_president@whitehouse.gov'
Cc: 'bburton@who.eop.gov'; 'blabolf@who.eop.gov'; 'cglunz@ceq.eop.gov'; 'jearnest@who.eop.gov'; 'jpsaki@who.eop.gov'; 'nshapiro@who.eop.gov'; 'rcherlin@who.eop.gov'; 'rgibbs@who.eop.gov'; 'tvictor@who.eop.gov'; 'AskDOJ@usdoj.gov'; 'Press-Citizen, News'; 'newstips@evtrib.com'; 'news-tips@nytimes.com'; 'newstips@upi.com'; 'newstrack_desk@upi.com'; 'njohnson@marinij.com'; 'nparanjape@winctv.com'; 'nytnews@nytimes.com'; 'Press-Citizen, Online'; 'oped@nytimes.com'; 'Press-Citizen, Opinion'; 'pdemko@citypages.com'; 'pepler@evtrib.com'; 'pete.goering@cjonline.com'; 'phil.griffin@nbc.com'; 'photo@washingtontimes.com'; 'photorequest@washingtontimes.com'; 'president@nytimes.com'; 'press@courier-herald.com'; 'pressreleases@upi.com'; 'public@nytimes.com'; 'publisher@cgsentinel.com'; 'publisher@courier-journal.com'; 'publisher@nytimes.com'; 'readerep@courant.com'; 'rlinex@corsicanadailysun.com'; 'rlinex@cnhi.com'; 'samuel.spies@newsobserver.com'; 'tconnor@nydailynews.com'; 'wsbtnews@wsbt.com'

Subject: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his chest with a felt tip:

10/20/2009

JG000013

FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his che... Page 3 of 7

kill that nigger wife of yours, shitmouth nigger; she looks the scuz while you're still fuckingup; just keep up that coy fuckingup, niger, and you need to be missing your stuff permanently; mr. shitmouth nigger:

Decapitate and nigger drag that shitmouth, uppity, filthy porch-monkey ni666er...

...do it to his children and family first in front of him.

Failure to comply. That'll teach him.

You dare fail to comply in front of the people, mr. shitmouth ni666er.

Faxed and e-mailed months and weeks ago, multiply to white house:

ATTN: Commutation, pardons, and expediting by executive order: Another event, described and true, which, under this executive capacity, commands you now to act: cv 07 0113 SBA; cv 07 5816 CRB; both Ninth circ., cases of pure speech over being SWATted for talking to u.s., u.s. states' cops; first speech case that started, caused and initiated both cases found protected. The pigcopshitmouths and their retarded system are the ones that started all of it by moving against protected speech in the first place and case. Gimbel has been robbed of all and everything for nothing, for over 5 yrs. straight now by the Satan-faced people of this nation and its states. They still haven't properly returned Gimbel's property, computers or anything, now over 5 years later. You are duty bound to definitively solve and remove the over five year intrusion upon this man by a Satan government. Let me make this 1-pg. simple for you, and you better not get it wrong.

Mr. shitmouth Bush: (now to the "president" ni666er):

You and the shitmouth shit-'merican liar-Satan system will immediately make restoration in the full amount to John Gimbel for crimes by the governments of the united states and its states against John Gimbel.

This is not even any "commuting." 'hastening the restoration process' request or demand, nor any executive-expedite-restoration-to-victim request as might exist among the run of recent events ("pardons").

This is an explicit order and command for the shitmouth united states of asshole to pay immediately in full restoration for its crimes to John Gimbel.

When you are done paying that, for your crimes, you should willfully decapitate and drag your families and children to get The People some real meaningful, personal, valuable (and timely), year-over-year booty off you.

You will at least commence with the first order, immediately. Failure to do so immediately escalates in all amounts and conditions.

Bush and government: (and now the shitmouth ni666er):

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JG000014

FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his che... Page 4 of 7

You need to cram this 2-bit check up your assmouth and die for the lifelong grand larceny and great train robbery shitmouth goons in your government created-illegally-against me.

You need to pay up the full amounts in 2 federal court cases (cv 07-0113 SBA; cv 07-5816 CRB). Both are speech cases, (first amendment), both for amendment ripouts for over 5 years now for first time speaks to goons-pigs-deputies-copshitmouths, happening during your term, first speech case that started, caused and initiated both cases found protected.

Pay up; I've wiped my ass with this check; your money's no good.

John Gimbel

Torn up scanned Bush's shitmouth "stimulus" check posted here. System may not fax graphic too well.

John Gimbel 08-15701
225 Brevus St. filed Feb. 18, 2009 no. 17
Crescent City CA
95531
707.464.5908
Appellant/plaintiff
in pro se
U.S. COURT OF APPEALS
NINTH CIRCUIT

JOHN GIMBEL

CASE NO.:

08-15701
Appellant/plaintiff, (DIST. COURT NO.:
CV

07-5816 SBA)
MEMO: TO RECORD:

v.

ADVISORY TO OPPOSITION
TO RETURN STOLEN GOODS

DEPUTY FRANK VILLARREAL, DEL NORTE	PROPERLY WITH
DISTRICT ATTORNEY, DEL NORTE	DEMANDED RECOMPENSE
SHERIFF'S DEPARTMENT, DEL NORTE	-APOLOGY; ADVISORY:
SUPERIOR COURT (FOLLET), UNNAMED	NO FURTHER DELAYS
ACCOMPLICE "DOE" TO VILLARREAL,	TOLERABLE
DEL NORTE COUNTY, STATE OF	
CALIFORNIA	

Respondents/defendants

Plaintiff puts to public notice herewith, the record of advisory to opposition to properly return stolen goods, pay up, desist and get out; or the recompense increases by the amounts in advisory. Copy of advisories attached hereto as Exhibits A and B.

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JG000015

FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his che... Page 5 of 7

Before advisory, the complaints-recompense stood: flat 1360 million
original to complaint cv 07-0113 SBA; and, 7 billion
flat original to cv 07-5816 CRB.

Calculation to date from advisories:

Using 30 day months (leave out the extra 5 days in a year):

May 22, 2007 to Feb. 29, 2008 = 277 days;

$277 \times 10 \text{ million a day} = 2,770,000,000$

From Feb. 29, 2008 to Feb. 7, 2009 (today) = 338 days;

$338 \times 20 \text{ million a day} = 6,760,000,000$

Adding the totals:

1,360,000,000

7,000,000,000

2,770,000,000

6,760,000,000

17,890,000,000

17 billion 890 million to date (Feb. 7, 2009)

is the amount they will pay for continuing to upend plaintiff's life, time and pursuits, the great train robbery and SWAT they had conducted for protected speech, and for still sitting on the massive booty they stole for protected speech—they're still sitting on it here over 5 years later. They are nothing more than resisting arrest; their risk goes up.

Date: _____

John Gimbel,

appellant, in pro se

EXHIBIT A

From: J.[SMTP:john@gimbel@charter.net]

Sent: Tuesday, May 22, 2007 3:39 PM

To: 'jvrieze@mitchelllawfirm.com'; 'rjh@shastalaw.info';

'troy.overton@doj.ca.gov'

Subject: C070113 MJJ: Claim amounts will increase by 10 million per day if recompense action is not accorded immediately:

Dear defendants,

IN LIGHT OF A RECENT SENDING TO ALL DEFENDANTS IN THE REGULAR MAIL (COPY HANDED TO VRIEZE MAY 16, 2007; PUT IN MAIL TO OTHER DEFENDANTS MAY 16, 2007—VERY ROUGHLY MAYBE 30 PGS. TO EACH); AND, IN LIGHT OF ALL OTHER VIEWS POSITED BY CLAIMANT IN ALL BRIEFS AND COMPLAINTS —THE AMOUNT OF RECOMPENSE STATED BY CLAIMANT WILL

10/20/2009

JG000016

FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his che... Page 6 of 7

NOW INCREASE

BY 10 MILLION DOLLARS EVERY SINGLE DAY, SAT. AND SUN. INCLUDED,
FOR EVERY DAY'S DELAY IN GETTING THE POSSESSIONS WITH STATED RECOMPENSE
RETURNED TO CLAIMANT.

EXHIBIT B

From: J.[SMTP:johngimbel@charter.net]
Sent: Friday, February 29, 2008 11:29 AM
To: 'john.devine@doj.ca.gov'; 'jvrieze@mitchelllawfirm.com';
'wda@shastalaw.info'; 'troy.overton@doj.ca.gov'; 'johngimbel@charter.net'
Subject: You fucking, mal-lingering, dallying defendants-scum are put on
notice.

Every day from this day forward, for every day you fail again TO RETURN TO
JOHN GIMBEL ALL HIS PROPERTY WITH ALL THE RECOMPENSE TO DATE, including the
1360 million in the suit, (07-0113 SBA; 07-16966); the 10 million a day
accrued since notice to you on May 22, 2007 will now
increase to 20 million dollars per day for any further delays. Sat. and
Sun. treated the same.

Eat a pile of shit in your fucking mouths if you don't like it; (you must
seek to) disrupt your lives until you're dead in front of me.

You'll be attaining your final improved condition.

And don't get wise, and don't be beguiling me shit-merican filth, as I
order you to your good, or your worth.

<http://apnews.myway.com/article/20090925/D9AUG1FO0.html>

10/20/2009

JG000017

FW: Operation kill big-nig-rig: kill the "president" nigger, then write "fed shit" on his che... Page 7 of 7

10/20/2009

JG000018